IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

THURSDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND SIX

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

* * *

WP.No.10384 of 2006

Between:

D.Hanimi Reddy, s/o. Matta Reddy,
Upasarpanch-incharge-sarpanch,
R/o.Gannavaram (v),
Macherla Mandal,
Guntur district. **… Petitioner**

Versus

The District Panchayat Officer,
Guntur district & Ors. **… Respondents**

Counsel for the Petitioner: **M/s. CCS.Sastry (4154)**

Counsel for the Respondents: **GP for P.Raj & Rural Dev.**
Mr.O.Manohar Reddy

ORDER :

The writ petition is filed a writ of mandamus or anhy other appropriate writ, order or direction, declaring the action of respondents 1 and 2 herein in re-inducting the third respondent herein as sarpanch, when the office of sarpanch was vacant for a period more than one and half year, that too without conducting fresh election in place of the petitioner – Upa Sarpanch-cum-Sarpanch-in-charge before the expiry of his term till 23-8-2006 is contrary to law, erroneous and wholly without jurisdiction and consequently not to discontinue the petitioner to discharge his duties as in-charge sarpanch of Gannavaram Gram Panchayat, Macherla Mandal, Guntur district and to pass such other suitable orders.

This court issued Rule nisi on 30-5-2006 and made an interim order in WPMP.No.13040 of 2006 to the effect that the question as to whether it is permissible for a sarpanch to be absent for years together and resume duty thereafter, needs to be examined. Hence, there shall be interim direction for a period of four weeks.

An application to vacate interim order WVMP.No.1046 of 2006 was moved and the matter was fixed for final hearing.

The facts in brief are as hereunder:

The petitioner was elected as Upa-sarpanch of Gannavaram Gram Panchayat, Guntur district on 23-8-2001 and the third respondent was elected as sarpanch on 23-8-2001. It is further stated that the third respondent continued as sarpanch for a period of three years from 23-8-2001 to 23-8-2004. Thereafter he was appointed as in charge sarpanch, the powers of sarpanch were delegated to him initially for a period of six months from 21-9-2004 and thereafter extended from time to time till date. It is also stated that the original sarpanch delegated his powers citing health grounds. The term of office of sarpanch is due to expire on 23-8-2006. As per section 26 of the Panchayat Raj Act, (hereinafter referred to in short as 'the Act' for the purpose of convenience) when once the powers of sarpanch are devolved or delegated for a period more than 15 days, the upa-sarpanch is deemed sarpanch till fresh election is made to his office. At their whims and fancies the official respondents cannot re-induct original sarpanch that too without conducting fresh elections.

The third respondent had denied certain allegations and had taken a stand that it is true that the petitioner was elected as upa-sarpanch and third respondent is elected as sarpanch. It was further pleaded in the counter-affidavit that due to ill-health he could not discharge the functions of sarpanch and requested the authorities to grant him leave and permit the petitioner to perform the functions of sarpanch. In view of the same, the powers have

been delegated to the petitioner and after he assumed office, the powers have been conferred on him. It is further stated that the provisions of Section 26 of the Panchayat Raj Act have no application to the facts of this case.

It is also further stated that when once the powers are devolved or delegated for a period of more than 15 days, the Upa-sarpanch is deemed sarpanch till fresh election is made to his office is wholly untenable.

It is also further stated that the third respondent is duly elected sarpanch of the Gram Panchayat and he was absent for some time and after obtaining permission from the authorities only and when once he assumed charge after recovery from ill-health, he is entitled to enjoy the powers of sarpanch. It is also stated that the petitioner being upa-sarpanch has only right to perform the functions of sarpanch during his absence.

Section 26 of the Act deal with devolution and delegation of sarpanch's powers and functions and filling up of vacancies in the office of sarpanch reads as hereunder:

> *(1) When the office of sarpanch is vacant, the upa-sarapanch shall exercise the powers and perform the functions of the sarpanch until a new sarpanch is declared elected and assumes office.*
>
> *(2) If the Sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order of a Court from exercising the powers and performing the functions of the Sarpanch, or is incapacitated for more than fifteen days, his powers and functions during such absence, restraint or incapacity shall devolve on the upa-sarpanch.*

(3) When the sarpanch is under suspension or when the office of sarpanch is vacant or the sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order of a Court from exercising the powers and performing the functions of sarpanch or is incapacitated for more than fifteen days and the Upa-sarpanch also is under suspension or there is either a vacancy in the office of upa-sarpanch or the upa-sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order of a Court from exercising the powers and performing the functions of the upa-sarpanch or is incapacitated for more than fifteen days, the powers and functions of the sarpanch shall devolve on a member of Gram Panchayat appointed by the Commissioner in this behalf.

The member so appointed shall be styled as the temporary sarpanch and he shall exercise the powers and perform the functions of the sarpanch until a new sarpanch or upa-sarpanch is declared elected or either the sarpanch or the upa-sarpanch ceases to be under suspension or returns to jurisdiction or ceases to be restrained by an order of a court or recovers from his incapacity, as the case may be.

(4) The Upa-sarpanch or the temporary sarpanch appointed under sub-section (3) shall report to the District Panchayat Officer, any vacancy in the office of sarpanch within one month from the date of occurrence of such vacancy.

(5) Subject to such rules as may be prescribed, the sarpanch may, by an order in writing, delegate any of his powers and functions, with such restrictions and conditions as may be specified in the order, to the Upa-sarpanch or in case there is a vacancy in the office of upa-sarpanch or the upa-sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order of a court from exercising his powers and performing his functions to any member.

(6) The reference to the powers and functions of

sarpanch is sub-sections (1) (2), (3) and (5) shall, where he is also the executive authority, be deemed to include a reference to his powers and functions as executive authority.

(7) *The exercise of any powers or the performance of any functions devolving on the Upa-sarpanch under sub-section (2) or delegated to the Upa-sarpanch or any member under sub-section (5), shall be subject to the control and revision by the sarpanch*.

Sub-section (1) no doubt specifies that when the office of sarpanch is vacant, the upa-sarpanch shall exercise the powers and perform the functions of sarpanch until a new sarpanch is declared elected and assumes office.

Sub-section (2) specifically says that if the Sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order of a Court from exercising the powers and performing the functions of the Sarpanch, or is incapacitated for more than fifteen days, his powers and functions during such absence, restraint or incapacity shall devolve on the upa-sarpanch.

Here is a case, where the sarpanch was unable to discharge his duties due to ill-health and after recovering when the sarpanch was willing to assume duty the authorities conferred the powers on the sarpanch. Even on a careful reading of both sub-section (1) and (2) of Section 26 of the Act, this court is of the considered opinion that there is absolutely no illegality in the impugned action. It is needless to say that the Gram Panchayat being a

democratic institution, the person who is duly elected always be given an opportunity to be in office till the expiry of his term unless or otherwise he is disqualified by any of the provisions of the statute. Here is a typical case, where during a particular period the sarpanch was unable to discharge his duties that too with the permission of the authorities and when the sarpanch came back to assume the office, the upa-sarpanch cannot approach this court and contend that the said action of conferring such powers on the sarpanch who is entitle to discharge his duties as sarpanch is unsustainable. The very stand appears to be peculiar. Viewed from any angle both in law and equity, the stand taken by the writ petitioner cannot be sustained.

The writ petition shall stand dismissed. No order as to costs.

July 6th, 2006. ----------

Is L. P. S. NARAYANA, J.